IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO.868 OF 1998

Deepak Ramchandra Dhamal
Age 31 yrs., Occ: r/o. PL/5/B/13/4, Sector-9
Khanda Colony, New Panvel ...Appellant.

v/s

The State of Maharashtra ...Respondent.

Mr. K.S. Patil for the appellant.

Mr. D.R. More, APP for the State.

CORAM : V.G.PALSHIKAR &
R.C.CHAVAN, JJ

DATED : 22ND JULY 2005

ORAL JUDGMENT : (Per R.C.Chavan, J)

1. Being aggrieved by his conviction for an offence punishable under section 302 of the Indian Penal Code and resultant sentence of imprisonment for life and fine imposed upon him, the accused in Sessions Case No. 105 of 1996 before the Sessions Judge, Alibag has preferred this appeal.

2. The facts which led to prosecution of the appellant are as under:-

3. Appellant was married to complainant's daughter Sheela in 1990 who gave birth to daughter Anuradha. Appellant was addicted to liquor and used to abuse and ill-treat Sheela, leading to her complaints to her father and neighbours, who used to persuade the appellant to improve. On 22/3/1996, at about 3.45 p.m., the victim sustained burn injuries at the house of accused. The accused himself carried the victim to Panvel Municipal Dispensary where she was pronounced dead.

4. Police registered accidental death, which was latter converted to an offence and on completion of investigation, arrested and chargesheeted the accused.

5. The learned Judicial Magistrate, First Class, Panvel committed the case to the Court of Sessions on finding that the accused was involved in the offence of murder triable exclusively by the Sessions Court. The learned Sessions Judge charged the accused of offences punishable under sections 302 and 498A of the Indian Penal Code. Accused pleaded not guilty and hence was put to trial.

6. In its attempt to bring home the guilt of the accused, prosecution examined 9 wittiness. The learned Sessions Judge examined the accused under

section 313 Cr.P.C. and upon consideration of the prosecution evidence, in light of defence, convicted the accused of the offence punishable under section 302 IPC and sentenced him to suffer imprisonment for life and fine of Rs 5000/- or in default further imprisonment for two years. The learned judge acquitted the accused of the offence punishable under section 498A of the Indian Penal Code. Aggrieved thereby, this appeal has been filed.

7. With the help of the learned Counsel, we have gone through the entire evidence. The evidence of P.W. 1 - Manisha and P.W. 2 - Meena, neighbours and P.W. 5 - Mangala, cousin is absolutely unhelpful to connect the accused to the offence of murder.

8. As regards offence punishable under section 498A, since the accused has been acquitted and since there is no appeal, it is not necessary to discuss that part of the evidence.

9. P.W. 3 - Kondiram, father of the deceased, states that he reached only after his daughter had died. His inquiry with the accused revealed that the victim had immolated herself. He stated that he alleged in his complaint at Exhibit-16 that his daughter was set on fire but he does not give any reason as to why he said

so in his complaint. In the entire examination-in-chief and cross-examination, this witness (P.W. 3 - Kondiram) does not clarify as to why he felt that the accused had set the victim on fire. Therefore, his evidence is grossly inadequate to even remotely suggest that the appellant had murdered his wife.

10. P.W.4 - Anuradha, victim's daughter aged 8 years had nothing to say about the incident.

11. P.W. 6 - Shahaji Kadam is a panch in respect of panchnama of spot and seizures made at the spot. The panchnama of spot - Exhibit-23 shows that there was a stove with some kerosene in it. There were some burnt pieces of clothes at the spot. However, these observations do not help in connecting the accused to the crime.

12. P.W. 7 - Dr. Pawar proved the notes of post-mortem examination at Exhibit 25. The victim seems to have died of 98% burns.

13. P.W.8 - P.S.I. Kapse and P.W. 9 - ACP Bagwan have conducted various parts of the investigation. P.W. 9 - ACP Bagwan proved the injury certificate of accused showing that both the palms of the accused had

sustained burns. This would be consistent with the attempt of the accused to extinguish the fire. It may be recalled that, according to the prosecution, the accused himself had taken his wife to hospital. In view of this, there is absolutely no iota of evidence to indicate that the appellant was in any manner involved in the demise of his wife.

14. We have gone through the judgment of the learned trial judge. It seems that the learned trial judge came to hold that if the accused was present at the spot and sustained burn injuries while trying to extinguish fire, he would have normally raised cries, calling neighbours to assist him. According to the learned trial judge, the accused put his wife clandestinely in rickshaw and took her to Municipal Dispensary. This was indicative of his complicity in murder. We are afraid that conclusions drawn are too far fetched and do not stand to judicial scrutiny. There is nothing in the evidence on record to show that accused clandestinely took his wife to dispensary or that he did not call any neighbours.

15. Consequently, we find ourselves unable to concur with the learned trial judge, allow the appeal and set aside the conviction of the appellant and the resultant sentence imposed upon the appellant and

acquit him of offence punishable under section 302 of the Penal Code. Fine, if paid, be refunded to the appellant. Bail bonds of the appellant shall stand cancelled.

(V.G. PALSHIKAR,J.)

(R.C. CHAVAN, J.)